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P 181700Z NOV 98

FM SECDEF WASHINGTON DC//ATSD-IO//

TO RUEKJCS/JOINT STAFF WASHINGTON DC//OJCS-LA/DJS/IG/J2/J3//

RUEADWD/SECARMY WASHINGTON DC//SAIG-IO/GC//

RUENAAA/SECNAV WASHINGTON DC//NAVINSGEN/GC//

RUEAHQA/OSAF WASHINGTON DC//SAF-IG/GC//

RUEADWD/CSA WASHINGTON DC//DACS/DAMI/DAJA/DAMO/DAAR//

RUENAAA/CNO WASHINGTON DC//N00/N09/N095/N2/N3/N5/NLSC//

RUEAHQA/CSAF WASHINGTON DC//CC/CV/XO/XOI/JAG/AF-RE//

RUEACMC/CMC WASHINGTON DC//CMC/ACMC/IG/SJA/CL/C4/PP&O/MCRC//

RUFGNOA/USCINCEUR VAIHINGEN GE//IG/J2/J3/SJA//

RULYSCC/USACOM NORFOLK VA//IG/J2/J3/SJA//

RUCJACC/USCINCCENT MACDILL AFB FL//IG/J2/J3/SJA//

RUCJAAA/USSOCOM MACDILL AFB FL//IG/J2/J3/SJA/CORB//

RUMIAAA/USCINCSO MIAMI FL//IG/J2/J3/SJA//

RUPEUNA/USCINCSpace PETERSON AFB CO//IG/J2/J3/SJA//

RHCUAAA/USCINCTrans SCOTT AFB IL//IG/J2/J3/SJA//

RHHMUNA/USCINCPAC HONOLULU HI//IG/J2/J3/SJA//

RUCUSTR/USCINCSSTRAT OFFUTT AFB NE//IG/J2/J3/SJA//

RUETIAA/DIRNSA FT GEORGE G MEADE MD//IG/GC/NSOC//

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RUEKDIA/DIA WASHINGTON DC//IG/J2/GC/DO/DHS/DAC/DAJ/DIO/MC//

RUEBMJB/NRO WASHINGTON DC//IG/GC//

RUEAIJU/NIMA WASHINGTON DC//IG/GC//

RUEAADN/DTRA WASHINGTON DC//IG/GC/CI//

RUEAUSA/CNGB WASHINGTON DC//NGC-ZA/NCG-ARZ/NGB-IG//

RUEAUSA/NGB WASHINGTON DC//CF//

INFO RUEKJCS/SECDEF WASHINGTON DC//GC/IG/USDP/C3//ATSD-IO//

RUDHAAA/CDRINSCOM FT BELVOIR VA//CDR/CS-IO/IG/DCSOPS/SJA//

RUCXNLG/ONI SUITLAND MD//IG/GC//

RUDHNIS/DIRNAVCRIMINVSERV WASHINGTON DC//IG/GC//

RUQVAIA/AIA KELLY AFB TX//CC/CV/IG/IN/SJA//

RUEDADI/AFOSI BOLLING AFB DC//CC/CV/IG/SJA//

RUWMFBA/AFIA KIRTLAND AFB NM//CC/IG-IO//

RULSMCA/MCIA QUANTICO VA

BT

UNCLAS SUBJECT: POLICY GUIDANCE FOR INTELLIGENCE SUPPORT TO FORCE PROTECTION

REFERENCES:

A. EXECUTIVE ORDER 12333

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B. DODD 5240.1

C. DODD 5200.27

D. DOD REG 5240.1-R

E. MCM 75-91

F. AR 381-10

G. SECNAVINST 3820.3D

H. AFI 14-104

J. MCO 3800.2A

J. DIRECTOR OF COUNTERINTELLIGENCE MEMO, "AUTHORITY TO COLLECT INFORMATION ON DOMESTIC TERRORIST AND OTHER GROUPS COMMITTING ILLEGAL ACTS THAT POSE A THREAT TO THE DEPARTMENT OF DEFENSE (U)," DATED 27 JAN 98.

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1. THE PURPOSE OF THIS MESSAGE IS TO PROVIDE POLICY GUIDANCE TO COMMANDERS AND SUPPORTING DOD INTELLIGENCE ORGANIZATIONS REGARDING PERMISSIBLE INTELLIGENCE SUPPORT FOR FORCE PROTECTION ACTIVITIES.
2. THIS MESSAGE HAS BEEN COORDINATED WITH THE JOINT STAFF; THE DOD GENERAL COUNSEL; THE INSPECTOR GENERAL, DOD; THE UNDERSECRETARY OF DEFENSE FOR POLICY; AND THE SENIOR CIVILIAN OFFICIAL IN THE OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE FOR COMMAND, CONTROL, COMMUNICATIONS, AND INTELLIGENCE.

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3. FORCE PROTECTION IS A FUNDAMENTAL COMMAND RESPONSIBILITY FOR ALL COMMANDERS WHEREVER LOCATED. DOD INTELLIGENCE AND COUNTERINTELLIGENCE (INTEL/CI) COMPONENTS HAVE AN IMPORTANT ROLE TO PLAY IN SUPPORT OF THE COMMANDERS' FORCE PROTECTION MISSION. EXECUTIVE ORDER 12333 AND DOD 5240.1-R REGULATE THE CONDUCT OF INTEL/CI ACTIVITIES; THE ATTORNEY GENERAL HAS APPROVED THE PROCEDURES IN DOD 5240.1-R. THEIR PURPOSE IS TO ENABLE DOD INTEL/CI COMPONENTS TO CARRY OUT EFFECTIVELY THEIR AUTHORIZED FUNCTIONS WHILE ENSURING THAT THEIR ACTIVITIES THAT AFFECT UNITED STATES PERSONS ARE CARRIED OUT IN A MANNER THAT PROTECTS THE CONSTITUTIONAL RIGHTS AND PRIVACY OF SUCH PERSONS.
4. INTEL/CI COMPONENTS DO NOT HAVE A LAW ENFORCEMENT MISSION. LAW ENFORCEMENT IS THE RESPONSIBILITY OF THOSE AGENCIES SPECIFICALLY CHARTERED TO HANDLE LAW ENFORCEMENT MATTERS, E.G., PROVOST MARSHAL; CID; OSI; AND NCIS. (NOTE: AFOSI AND NCIS HAVE BOTH COUNTERINTELLIGENCE AND LAW ENFORCEMENT MISSIONS, WHICH ARE MANAGED SEPARATELY WITHIN THESE ORGANIZATIONS.) OFF THE INSTALLATION IN CONUS, LAW ENFORCEMENT IS THE RESPONSIBILITY OF LOCAL AND STATE LAW ENFORCEMENT OFFICIALS AND THE FBI AT THE FEDERAL LEVEL, NOT DOD INTEL/CI COMPONENTS.
5. WHEN FOREIGN GROUPS OR PERSONS THREATEN DOD PERSONNEL, RESOURCES,

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OR ACTIVITIES – WHETHER CONUS OR OCONUS – DOD INTEL/CI COMPONENTS MAY INTENTIONALLY TARGET, COLLECT, RETAIN, AND DISSEMINATE INFORMATION ON THEM (UNLESS THE GROUPS OR PERSONS IN QUESTION MEET THE DEFINITION OF UNITED STATES PERSONS IN EXECUTIVE ORDER 12333/DOD 5240.1-R – SEE PARA 11A BELOW). BOTH CONUS AND OCONUS, INTEL/CI COMPONENTS ARE RESTRICTED IN WHAT AND HOW THEY CAN COLLECT, RETAIN, AND DISSEMINATE INFORMATION WITH RESPECT TO UNITED STATES PERSONS, AS EXPLAINED BELOW.

6. COMMANDERS MAY NOT LEGALLY DIRECT DOD INTEL/CI COMPONENTS TO TARGET OR INTENTIONALLY COLLECT INFORMATION FOR FORCE PROTECTION PURPOSES ON U.S. PERSONS UNLESS SUCH PERSONS HAVE BEEN IDENTIFIED IN REFERENCE J, OR SUBSEQUENT VERSIONS. THE FBI PARTICIPATES IN THE IDENTIFICATION OF THESE PERSONS.
7. COMMANDERS SHOULD BE COGNIZANT, HOWEVER, OF THE FACT THAT DURING THE CONDUCT OF ROUTINE LIAISON ACTIVITIES, DOD INTEL/CI COMPONENTS OFTEN RECEIVE INFORMATION IDENTIFYING U.S. PERSONS ALLEGED TO THREATEN DOD RESOURCES, INSTALLATIONS, MATERIEL, PERSONNEL, INFORMATION, OR ACTIVITIES. DOD INTEL/CI ACTIVITIES MAY ACT AS A CONDUIT AND MUST PASS ANY THREAT INFORMATION INCIDENTALLY RECEIVED IN THIS MANNER TO THE THREATENED COMMANDER AND THE ENTITY WHICH HAS

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RESPONSIBILITY FOR COUNTERING THAT THREAT (E.G., MILITARY POLICY, PROVOST MARSHAL, OR SECURITY DIRECTOR). THIS TRANSMITTAL OF INFORMATION DOES NOT CONSTITUTE COLLECTION BY THE DOD INTEL/CI ORGANIZATION WITHIN THE MEANING OF DOD REGULATION 5240.1-R (REFERENCE D), AND IS THEREFORE PERMISSIBLE. HOWEVER, ANY FOLLOW-ON INTEL/CI INVESTIGATION, COLLECTION, OR TARGETING OF SUCH U.S.

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PERSONS WOULD BE SUBJECT TO EXISTING PROCEDURES AS SET FORTH IN REFERENCES A THROUGH J.

8. IAW REFERENCE C., DOD LAW ENFORCEMENT AND SECURITY ORGANIZATIONS – AS OPPOSED TO INTEL/CI COMPONENTS – MAY LEGALLY ACCEPT AND RETAIN FOR UP TO 90 DAYS, UNLESS LONGER RETENTION IS REQUIRED BY LAW OR PERMISSION IS SPECIFICALLY GRANTED BY THE SECRETARY OF DEFENSE OR HIS DESIGNEE INFORMATION PERTAINING TO U.S. PERSONS WHICH THREATENS DOD RESOURCES, PERSONNEL, INSTALLATIONS, MATERIEL, INFORMATION, OR ACTIVITIES. COMMANDERS SHOULD TAKE APPROPRIATE ADVANTAGE OF LAW ENFORCEMENT LIAISON ACTIVITIES TO MONITOR CRIMINAL ACTIVITY IN THE VICINITY OF THEIR INSTALLATIONS/ACTIVITIES (ACTS OF TERROR, ASSAULT, THREATS OF HARM, OR DESTRUCTION OF GOVERNMENT PROPERTY ARE CRIMINAL ACTS).
9. TO CLARIFY THE ROLE OF DOD INTEL/CI ORGANIZATIONS IN SUPPORTING

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COMMANDERS' FORCE PROTECTION RESPONSIBILITIES, THE FOLLOWING GUIDANCE IS EFFECTIVE ON RECEIPT.

- A. WHEN DOD INTEL/CI ORGANIZATIONS LEARN OF INFORMATION PRESENTING A REASONABLE BELIEF THAT A U.S. PERSON OTHER THAN A PERSON IDENTIFIED BY THE DOD DIRECTOR OF COUNTERINTELLIGENCE (IN REFERENCE J) POSES A THREAT TO DEPARTMENTAL RESOURCES, PERSONNEL, INSTALLATIONS, MATERIEL, INFORMATION, OR ACTIVITIES, THE ACQUIRING UNIT SHALL IMMEDIATELY ALERT THE APPROPRIATE OFFICIAL OF THE THREATENED ENTITY AND PROVIDE THE INFORMATION TO THE APPROPRIATE LAW ENFORCEMENT AUTHORITY. FOLLOWING SUCH NOTIFICATION, IF THE ACQUIRING UNIT HAS REASON TO PERMANENTLY RETAIN THAT INFORMATION UNDER THE PROVISION OF PROCEDURE 3 OF DOD REGULATION 5240.1-R, IT SHALL REQUEST, BY THE MOST EXPEDITIOUS MEANS AVAILABLE AND THROUGH ITS SERVICE INTELLIGENCE COMPONENT, THAT OASD(C3I) EVALUATE THE ACQUIRED INFORMATION FOR RETENTION ("COLLECTABILITY DETERMINATION"). OASD(C3I) WILL COORDINATE THE REQUEST WITH THE DOD GENERAL COUNSEL AND THE ATSD(IO) PRIOR TO NOTIFYING THE SERVICE INTELLIGENCE COMPONENT OF APPROVAL/DISAPPROVAL OF THE REQUEST. THE MILITARY SERVICES ARE ENJOINED TO PROCESS COLLECTABILITY DETERMINATIONS EXPEDITIOUSLY.
- B. WHILE AWAITING A COLLECTABILITY/RETAINABILITY DETERMINATION, THE ACQUIRING UNIT MAY INDEX THE INFORMATION AND MAINTAIN IT ON FILE FOR A 90 DAY PERIOD. IF, DURING THAT 90 DAY PERIOD, THE ACQUIRING UNIT LEARNS OF ADDITIONAL INFORMATION RELATING TO THE THREAT POSED BY THE U.S. PERSON IN

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QUESTION, THE UNIT SHALL IMMEDIATELY PASS THAT INFORMATION TO THE APPROPRIATE OFFICIAL OR LAW ENFORCEMENT AUTHORITY. (THIS INFORMATION MAY BE DISSEMINATED TO AFFECTED COMMANDERS AND SECURITY OFFICIALS, ONLY.)

- C. IF OASD(C3I) DENIES PERMISSION TO COLLECT OR RETAIN INFORMATION ON THE U.S. PERSON, THE REQUESTING ORGANIZATION WILL REMOVE ALL INFORMATION PERTAINING TO THAT U.S. PERSON FROM ITS FILES AND DESTROY IT OR TRANSFER IT TO A DOD LAW ENFORCEMENT OR SECURITY ACTIVITY WHICH HAS AN OFFICIAL NEED FOR THE INFORMATION. OASD(C3I) WILL PROVIDE TO OATSD(IO) AND THE GENERAL COUNSEL, WITHIN FIVE WORKING DAYS, ONE COPY OF ALL PERMISSIONS TO COLLECT/RETAIN INFORMATION ON U.S. PERSONS NOT LISTED IN REFERENCE J. WITHIN 30 DAYS OF RECEIPT OF THIS MESSAGE, HEADS OF DOD INTEL/CI COMPONENTS WILL PROVIDE TO OATSD(IO) ONE COPY OF ANY INSTRUCTIONS ISSUED WHICH IMPLEMENT THIS MESSAGE.
10. REQUEST HEADS OF DOD INTEL/CI COMPONENTS ENSURE THAT ALL FIELD LOCATIONS PROVIDING INTELLIGENCE SUPPORT TO COMMANDERS RECEIVE A COPY OF THIS MESSAGE.
11. ADDRESSEES ARE INVITED TO VISIT OUR RECENTLY ACTIVATED ATSD(IO) HOMEPAGE ON THE INTERNET AT WWW.DTIC.MIL/ATSDIO.

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12. DEFINITIONS:

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A. FROM APPENDIX A, DOD REGULATION 5240.1-R:

(1) THE TERM "U.S. PERSONS" MEANS:

(A) A U.S. CITIZAN;

(B) AN ALIEN KNOWN BY THE DOD INTELLIGENCE COMPONENT CONCERNED TO BE A PERMANENT RESIDENT ALIEN (PRA);

(C) AN UNINCORPORATED ASSOCIATION SUBSTANTIALLY COMPOSED OF U.S. CITIZENS OR PRAS;

(D) A CORPORATION INCORPORATED IN THE U.S., EXCEPT FOR A CORPORATION DIRECTED AND CONTROLLED BY A FOREIGN GOVERNMENT OR GOVERNMENTS. A CORPORATION OR CORPORATE SUBSIDIARY INCORPORATED ABROAD, EVEN IF PARTIALLY OR WHOLLY OWNED BY A CORPORATION INCORPORATED IN THE U.S., IS NOT A U.S. PERSON.

[A PERSON OR ORGANIZATION OUTSIDE THE U.S. SHALL BE PRESUMED NOT TO BE A U.S. PERSON UNLESS SPECIFIC INFORMATION TO THE CONTRARY IS OBTAINED. AN ALIEN IN THE U.S. SHALL BE PRESUMED NOT TO BE A U.S. PERSON UNLESS SPECIFIC INFORMATION TO THE CONTRARY IS OBTAINED.]

[A PERMANENT RESIDENT ALIEN IS A FOREIGN NATIONAL LAWFULLY ADMITTED INTO THE U.S. FOR PERMANENT RESIDENCE AND,

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THEREFORE, IS A U.S. PERSON.]

(2) FOREIGN INTELLIGENCE IS INFORMATION RELATING TO THE CAPABILITIES, INTENTIONS, AND ACTIVITIES OF FOREIGN POWERS, CAPABILITIES, INTENTIONS, AND ACTIVITIES OF FOREIGN POWERS, ORGANIZATIONS, OR PERSONS, BUT NOT INCLUDING COUNTERINTELLIGENCE EXCEPT FOR INFORMATION ON INTERNATIONAL TERRORIST ACTIVITIES.

(3) COUNTERINTELLIGENCE IS INFORMATION GATHERED AND ACTIVITIES CONDUCTED TO PROTECT AGAINST ESPIONAGE, OTHER INTELLIGENCE ACTIVITIES, SABOTAGE, OR ASSASSINATIONS CONDUCTED FOR OR ON BEHALF OF FOREIGN POWERS, ORGANIZATIONS, OR PERSONS, OR INTERNATIONAL TERRORIST ACTIVITIES, BUT NOT INCLUDING PERSONNEL, PHYSICAL, DOCUMENT, OR COMMUNICATIONS SECURITY PROGRAMS.

B. FROM JOINT PUB 2-01, DEPARTMENT OF DEFENSE DICTIONARY OF MILITARY AND ASSOCIATED TERMS, DATED 23 MAR 94: FORCE PROTECTION IS DEFINED AS "SECURITY PROGRAM DESIGNED TO PROTECTSOLDIERS, CIVILIAN EMPLOYEES, FAMILY MEMBERS, FACILITIES, AND EQUIPMENT, IN ALL LOCATIONS AND SITUATIONS, ACCOMPLISHED THROUGH PLANNED AND INTEGRATED APPLICATION OF COMBATING TERRORISM, PHYSICAL SECURITY, OPERATIONS SECURITY, PERSONAL PROTECTIVE SERVICES, AND SUPPORTED BY INTELLIGENCE, COUNTERINTELLIGENCE, AND OTHER SECURITY PROGRAMS."

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